

REMARKS/ARGUMENTS

Claims 1-24 are pending in the above-identified application. Claims 1 through 14 have been cancelled without prejudice to Applicants' right to prosecute the subject matter of the claims in a related, co-pending application. Claims 17, 18 and 20 have been amended. Support for these amendments is identified in the following remarks. No new matter is added by these amendments.

Election/Restrictions

This application contains claims 1 through 14 that are considered by the Examiner to be drawn to an invention nonelected with traverse in Applicant's reply filed September 14, 2005. Claim 1 through 14 are hereby cancelled without prejudice to Applicants' right to prosecute the subject matter encompassed by the claims in a related, co-pending application.

Claim Objections

Claim 17 and claims 18-24 dependent thereon, stand objected to because the Examiner believes claim 17 is directed in part to nonelected subject matter. In particular, the Examiner believes that the reverse complement of the nucleotide sequence of claim 15 was not elected in the response to the restriction requirement filed September 14, 2005. The nonelected subject matter has been summarized by the Examiner as being drawn to a polynucleotide targeting construct, a method for inactivating a D-like cyclin inhibitor via structurally disrupting the D-like cyclin inhibitor gene, an oligonucleotide and a method of antisense inhibition of the D-like cyclin inhibitor gene. This subject matter was believed to be withdrawn from consideration as being directed to nonelected inventions in the office action mailed December 20, 2005.

Although Applicants do not believe that the reverse complement of the nucleotide sequence of claim 15 was not elected in the prior response, claim 17 has been amended to delete the phrase "the reverse complement thereof." This amendment has been made without prejudice

to Applicants' right to prosecute the subject matter encompassed by the claims in a related, co-pending application.

Rejections Under 35 U.S.C. §112

Claim 20 stands rejected under 35 U.S.C. §112, first paragraph, as failing to comply with the written description requirement. In particular, the Examiner believes that the claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. Specifically, the Examiner believes that the recitation in claim 20 of the limitation "the CaMV 35S or mannopine synthase hybrid promoter MAC" does not find support in the specification as filed, and thus constitutes new matter.

Applicants have reviewed the specification and direct the Examiner to, for example, page 18, lines 27 through 30. At this portion of the specification, Applicants describe a number of plant promoters that can be used to express the nucleotide sequence of the present invention. Included in this section is a description of the hybrid promoter designated "Mac". The promoter comprises "elements of the CaMV 35S combined with the 3' region of mannopine synthase promoter. (Comai et al., *Plant Mol. Biol.* 15:373-381 (1990); incorporated herein by reference)." As such, the hybrid Mac promoter is well known in to the skilled artisan, and no further clarification is needed. Should the Examiner be concerned about the clerical error inserting an "or" instead of an "and" between the CaMV 35 S and portion of the "mannopine synthase" promoter, claim 20 has been corrected. In addition, Applicants have amended claim 20 to recite "the hybrid promoter MAC comprising elements of the promoter associated with the gene encoding CaMV 35S and the 3' region of the gene encoding mannopine synthase" to clarify the elements of the Mac hybrid promoter.

Claim 19 and Claim 23 dependent thereon, stand rejected under 35 U.S.C. §112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. In particular, the Examiner believes that

Claim 19 is indefinite in the recitation of "capable of." The Examiner has asserted that it is unclear whether functioning in a plant cell is in fact a required feature of the promoter.

Applicants do not agree that the term "capable of" renders claim 19 indefinite, but in order to further expedite prosecution of the application, claim 19 has been amended to recite "an operably linked promoter that functions in a plant cell" to remove any doubt that the promoter must function in a plant cell.

Claim 20 and claim 24 dependent thereon, stand rejected under 35 U.S.C. §112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The Examiner believes that Claim 20 is indefinite in the recitation of "wherein the promoter is CaMV 25S, tomato E8, patatin, ubiquitin, mannopine synthase, rice actin I, soybean seed protein glycinin (GlyI), soybean vegetative storage protein." In particular, the Examiner believes that it is unclear how a promoter, which is a polynucleotide, could be CaMV 35S, tomato E8, patatin, ubiquitin, mannopine synthase, rice actin I, soybean seed protein glycinin (GlyI), soybean vegetative storage protein, which are polypeptides. The Examiner has suggested that the claim be amended to indicate that the promoters are obtained from the genes encoding the recited polypeptides.

Applicants do not agree with the rejection that claims 20 and 24 are indefinite. The terminology used in claims 20 and 24 is very common in the art and the skilled artisan would not be confused as to what elements are included within the scope of the claims. Although Applicants do not agree that any confusion would result from the terminology used in the claims, but in order to further expedite prosecution, claim 20 has been amended to recite "the promoter is associated with the gene encoding" one of the various listed proteins.

Applicants believe that each of the rejections under 35 U.S.C. § 112 alleged by the Examiner has been either traversed or obviated. Therefore, reconsideration and withdrawal of the various rejections is respectfully requested.

CONCLUSION

In view of the foregoing, Applicants believe all claims now pending in this Application are in condition for allowance and an action to that end is respectfully requested. If the Examiner believes a telephone conference would expedite prosecution of this application, please telephone the undersigned at 206-467-9600.

Respectfully submitted,

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